August 1, 2018

Presiding Judge and Associate Justices
California Court of Appeal
First Appellate District
350 McAllister Street
San Francisco, California 94102

Re: Pac. Gas & Elec. Co. v. Superior Court (Abbott) (Court of Appeal No. A154847)


Pursuant to Rule 8.500(g) of the California Rules of Court, Southern California Edison Company (“SCE”) and San Diego Gas & Electric Company (“SDG&E”) respectfully request permission to file the accompanying amici curiae letter brief in support of Pacific Gas & Electric Company’s (“PG&E’s”) Petition for Writ of Mandate, Prohibition, or Other Appropriate Relief (“Petition”). Amici have a unique perspective on the important issues raised in this case.

SCE and SDG&E are two of California’s oldest and largest electricity providers. Together, they deliver power to more than 18 million individuals and businesses across nearly 55,000 square miles in central, coastal, and southern California. Like PG&E, SCE and SDG&E are privately owned utilities whose businesses have been significantly affected by California courts’ recent decisions applying liability for inverse condemnation under the Takings Clause—a cause of action traditionally applied only to government entities—to private companies when incidents related to their equipment result in property damage. Amici request permission to file this letter brief because PG&E’s Petition does not fully address the potential effects of this issue on amici’s businesses and customers.

Amici believe that their views will help the Court resolve this case by illustrating how the trial court’s ruling, if allowed to stand, would have significant and detrimental consequences.
Letter Brief

Dear Justices:

The respondent court in these coordinated cases extended the judicially created remedy of “inverse condemnation” far beyond the bounds authorized by California law. For decades, the California Supreme Court and other California courts have held that the fundamental purpose and underpinning of inverse condemnation actions under the Takings Clause is to spread the cost of government-provided public goods through the benefitted community when that cost would otherwise be unfairly borne by individual property owners. But the respondent court’s decision disregards that purpose entirely and holds that losses resulting from conduct not determined to be tortious can be shifted from some private parties to other private parties (not to the public at large).

Unlike government agencies, privately owned public utilities cannot shift inverse condemnation losses to the broader public as a matter of right—they require regulatory permission to recover the costs of inverse condemnation. As described in PG&E’s Petition, the trial court’s unprecedented ruling—that a privately owned utility is subject to strict liability under inverse condemnation, even if it has no right to spread inverse losses—is a misguided expansion of inverse condemnation that will have significant consequences for privately owned utilities and for all Californians. The uncertainty created for privately owned utilities (with courts subjecting the utilities to inverse condemnation liability on the one hand, and the regulator denying the utilities the right to spread their losses on the other) is already harming the utilities, their employees, and their investors. Amici respectfully submit that this Court must act.

Privately owned utilities are vital to California’s economy and its residents. These companies deliver electricity to 75 percent of Californians, are among the state’s largest employers, and are on the front lines of implementing California’s environmental policies and mitigating the risks of climate change. The respondent court’s decision threatens to make privately owned utilities insurers of all property within potentially miles of their equipment, threatening these utilities’ economic viability and ability to fund infrastructure and new services necessary to provide adequate service to their customers. Correcting this mistake is especially urgent in light of changing environmental conditions that have contributed to increasingly frequent and destructive wildfires.

The trial court’s expansion of inverse liability has serious implications for thousands of pending claims arising out of California’s increasingly frequent and devastating wildfires. The risks to privately owned utilities is not speculative. Just recently, Standard & Poor’s, citing the “disconnect between the CPUC’s prudence standard… and the courts[’] strict liability standard,”
concluded that “the recent heightened risk associated with potential wildfire-related liabilities is a growing concern and presents an immediate threat to California’s regulated electric utilities.”

This issue is too important to both the public and courts to wait for eventual resolution on appeal. There are numerous cases pending in trial courts throughout the state arising out of recent wildfires. The courts and the parties are in urgent need of direction regarding inverse condemnation liability. Amici respectfully ask this Court to grant PG&E’s Petition, and decide that inverse condemnation is inapplicable to privately owned utilities, who lack the ability to implement the basic purpose of inverse condemnation by socializing losses incurred by individual parties across the broader community.

Statement of Interest of Amici Curiae Southern California Edison Company and San Diego Gas & Electric Company

Amici are two of California’s oldest and largest electricity providers. SCE delivers power to 15 million people and businesses across nearly 55,000 square miles in central, coastal, and southern California. SDG&E provides electricity to more than 3.1 million people and businesses across 4,100 square miles in San Diego and Orange Counties. Both SCE and SDG&E are privately owned utilities that are directly regulated by the California Public Utilities Commission (“PUC”) as to their retail rates. Although they provide a public service, privately owned utilities are not government agencies or other state actors.

Privately owned utilities differ in important ways from government entities. Government entities are largely shielded from unpredictable litigation costs by sovereign immunity, while privately owned utilities enjoy no such immunity. Government entities can recover cost increases as a matter of course through taxes, fees, unilateral rate increases, and the power to issue tax-exempt debt, while privately owned utilities cannot unilaterally raise rates to socialize costs. Instead, privately owned utilities must ask permission from the PUC. The PUC has the discretion to permit or deny rate increases as it sees fit. This important distinction was brought into sharp relief in 2017 when the PUC denied SDG&E’s request for a rate increase to recover almost $400 million in uninsured inverse condemnation losses arising out of the 2007 wildfires in the first case in which the PUC has considered rate recovery of inverse condemnation costs.

SCE and SDG&E have a particular interest in this case because application of the judicially created doctrine of inverse condemnation to privately owned utilities has a substantial impact on both utilities. As described more fully below, the fundamental premise underlying inverse

---

1 S&P Global Ratings, Will Wildfires Scorch California’s Utilities?, dated June 18, 2018 at 1, 3; id. at 3 (“The state’s susceptibility to wildfires combined with its regulatory risks are inconsistent with any other regulatory jurisdiction in North America.”).

2 In July 2018, the PUC denied SDG&E’s petition for rehearing of its refusal to approve a rate increase. In that denial, the PUC stated that the issue of inverse condemnation is for the courts, not the PUC, to decide.
condemnation liability is the ability to socialize losses—i.e., to shift the costs of a public improvement from an unfairly burdened private party to the public at large. Currently, certain appellate courts have applied inverse condemnation to privately owned utilities, but beginning with the PUC’s recent decision on SDG&E’s application for rate recovery with respect to the 2007 wildfires, the state (acting through the PUC) is not allowing those utilities to socialize the costs of such liability, which undermines the fundamental premise of the inverse condemnation theory. This doctrine was created specifically for governmental entities who not only have the power of condemnation but the power of taxation to pay for such condemnation. The courts’ application of this doctrine to private companies that lack the power to spread inverse condemnation losses as a matter of right is unconstitutional and illogical.

This Court should grant PG&E’s Petition and restore this central principle to the law of inverse condemnation. The respondent court’s decision puts amici and other privately owned utilities in the untenable position of being insurers of California’s wildfires, regardless of the utility’s fault or lack thereof and regardless of the utility’s ability to recover losses it has paid. Consequently, amici respectfully urge this Court to hold that inverse condemnation does not apply in the circumstances of this and similar cases.

Why Review Should Be Granted

Amici SCE and SDG&E respectfully submit that the Court should grant the Petition because: (1) the respondent court erred by rejecting the well-settled constitutional principle that socialization of inverse condemnation losses is the sine qua non of inverse condemnation liability; (2) the application of inverse condemnation to privately owned utilities without regard to the ability to socialize costs is having a significant, widespread, and damaging effect on utilities, their ability to serve their customers effectively, and their capacity to assist the state in meeting its challenging environmental goals; (3) the issue in the North Bay Fire cases is currently presented in numerous other wildfire-related cases throughout California; and (4) the issue presented in the Petition should be resolved with haste because climate change and the devastating wildfires it contributes to have become the “new normal” in California, and the state’s trial courts, plaintiffs, and the privately owned utilities need direction and clarity regarding inverse condemnation liability.

3 Indeed, inverse condemnation, which has been justified only insofar as it compensates private parties where the government has appropriated or damaged their property for the public good, should not apply at all to privately owned utilities when they are not acting as partners of government agencies or exercising delegated eminent domain power. Nor should it apply to accidents arising from (alleged) negligence in the ordinary operation of public infrastructure. See, e.g., Customer Co. v. City of Sacramento, 10 Cal. 4th 368, 383 (1995); Bauer v. Ventura Cty., 45 Cal. 2d 276, 286 (1955).

I. The Respondent Court Expanded Inverse Condemnation in an Unprecedented Way

Inverse condemnation is a judicially created constitutional remedy for landowners to seek compensation when the government deliberately takes or damages property to further a public use. The court below held that a privately owned utility can be held strictly liable in an inverse condemnation action even if the utility cannot socialize costs from private owners to the community at large. No California appellate court has authorized such an extension of inverse condemnation liability.

The respondent court cited two Court of Appeal decisions—Barham v. Southern California Edison Company and Pacific Bell Telephone Company v. Southern California Edison Company—in support of its ruling. While amici believe that Barham and Pacific Bell were wrongly decided, the respondent court’s decision on inverse condemnation actually extended rather than applied those cases, which both presumed cost-spreading as a matter of right. This new precedent conflicts with settled law that inverse condemnation claims are founded upon socialization of losses.

The respondent court’s decision warrants immediate review and correction, and its error illustrates why trial courts need guidance on when (and whether) to treat damage as a “taking,” triggering a constitutional inverse condemnation claim, as opposed to a tort, triggering a negligence, trespass, or nuisance claim.

The more removed a case is from a paradigmatic “taking”—in which the government deliberately exercises its eminent domain power by initiating a condemnation proceeding—the

---

5 Holtz v. Superior Court, 3 Cal. 3d 296, 304 (1970) (limiting application of inverse condemnation liability to “physical injuries of real property that were proximately caused by the improvement as deliberately constructed and planned”).
8 See, e.g., Holtz, 3 Cal. 3d at 303 (explaining that “the underlying purpose” of inverse condemnation is to “distribute throughout the community the loss inflicted upon the individual by the context of public improvements: to socialize the burden . . . that should be assumed by society”); Albers v. Cty. of Los Angeles, 62 Cal. 2d 250, 263 (1965) (“[T]he policy underlying the eminent domain provision in the Constitution is to distribute throughout the community the loss inflicted upon the individual by the making of public improvements.”); Belair v. Riverside Cty. Flood Control Dist., 47 Cal. 3d 550, 558–59 (1988) (“[T]he underlying purpose of our constitutional provision in inverse—as well as ordinary—condemnation is to distribute throughout the community the loss inflicted upon the individual . . . . Balanced against this cost-spreading objective is the reality that boundless liability will thwart the development of beneficial public improvements.”).
9 See, Sheffet v. Cty. of Los Angeles, 3 Cal. App. 3d 720, 733–34 (1970) (“[I]nverse condemnation does not involve ordinary acts of carelessness in the carrying out of the public entity’s program,” and property is “only deemed taken or damaged for a public use if the injury is a necessary consequence of the public project.”).
more important appellate guidance is. Cases like this one are particularly remote from the traditional takings context: plaintiffs assert claims against private rather than government defendants, and their claims ultimately allege ordinary negligence rather than deliberate property damage or seizure in furtherance of a public purpose. This case is therefore an ideal vehicle to clarify the bounds of inverse condemnation for the many superior court judges handling wildfire cases throughout California, and provide guidance that takes into account the changed factual and legal circumstances surrounding privately owned utilities’ ability to socialize inverse losses.

As applied by the respondent court, the Takings Clause functions as a shortcut to recovery from private entities engaged in the provision of public services, eliminating long-established elements of fault that apply to claims against private entities in analogous circumstances.

II. Judicial Expansion of Inverse Condemnation to Privately Owned Utilities Regardless of Their Ability to Socialize Costs Harms Utilities and Many Other Interests

Urgent review is necessary because judicial action unbinding inverse condemnation from its traditional moorings—i.e., to permit inverse condemnation claims even where entities lack the right to socialize losses—has had significant consequences for California’s privately owned utilities. Further, given the critical role that utilities play as citizens, employers, and engines of economic growth in California, the state’s economy, environment, and communities are suffering reverberating repercussions. These consequences will only get more severe as California continues facing the reality of climate change.

A. Privately Owned Utilities Make Substantial Contributions to California

The public services provided by privately owned utilities are of fundamental importance to California residents. SCE and SDG&E deliver power to millions of Californians. In order to deliver power safely, reliably, and affordably, SCE maintains a vast electrical system containing more than 13,000 miles of transmission lines, 106,000 miles of distribution lines, 1.4 million electric poles, and 720,000 distribution transformers. SDG&E maintains more than 1,800 miles of transmission lines, more than 16,000 miles of distribution lines, and over 200,000 poles.

The state’s three investor-owned electric utilities—SCE, PG&E, and SDG&E—together employ more than 40,000 Californians. In 2017, SCE spent approximately $3.8 billion on contracts with more than 3,200 suppliers, including $1.8 billion spent on diverse suppliers. Last year, SCE

is an eminent domain proceeding initiated by the property owner rather than the condemner. The principles which affect the parties’ rights in an inverse condemnation suit are the same as those in an eminent domain action.”); Customer Co. v. City of Sacramento, 10 Cal. 4th 368, 376–77 (1995) (“The ‘just compensation’ clause is concerned, most directly, with the state’s exercise of its traditional eminent domain power, guaranteeing that when the state proposes to take private property for public use, the owner of the property promptly will receive just compensation.”).


12 Id.
paid almost $480 million in taxes and franchise fees, making it Los Angeles County’s largest taxpayer. Similarly, in 2017, SDG&E spent more than $1.5 billion with suppliers, with more than $703 million spent on diverse suppliers. Further, SDG&E paid, in 2017, over $275 million in local taxes and franchise fees.

Privately owned utilities make other substantial investments in California, ranging from developing infrastructure to investing in improvements for the public good. Privately owned utilities are leading implementers of statewide environmental policies. As was recently explained in a letter from renewable energy industry leaders to the Governor and Legislative leaders, the “continued viability” of the state’s utilities “is fundamental to achieving many of California’s future objectives, including both clean energy advancements and reduced wildfire danger.”

Indeed, SCE delivers more solar power nationally than any other utility, and more than 28 percent of its energy comes from renewable sources. Approximately 45 percent of SDG&E’s energy delivered to customers is renewable.

Moreover, SCE, SDG&E, and other privately owned utilities invest heavily in their systems to protect against a variety of natural threats, including wildfires. Approximately 30 percent of SCE’s service territory, covering 9 million acres, consists of high fire risk areas. For SDG&E, approximately 2,600 square miles (1.6 million acres), or 57 percent of the SDG&E service area, are in high fire risk areas.

B. Privately Owned Utilities Serve the Public Good, But Lack Protections and Powers Necessary to Shoulder Inverse Condemnation Liability

Privately owned utilities occupy a space somewhere between an entirely private company and a municipal utility, shouldering many of the burdens of each type of entity but lacking concomitant privileges and powers. Unlike municipal utilities, privately owned utilities cannot rely on public funding or tax-free bonds to raise capital, and must rely instead on private markets. Privately owned utilities also have fiduciary duties to their shareholders, many of whom are individual California residents and retirement and pension funds. Unlike an unregulated private company, however, utilities cannot just raise their prices to cover increased costs or risks. Similarly, unlike an unregulated private company, utilities cannot choose to avoid high risk or fire-prone areas, or choose which customers they will serve, as the PUC mandates the utilities to provide service to all customers, including those in high-risk areas.

---

Unlike municipal utilities, privately owned utilities lack protections such as immunity from general tort liability and unilateral rate-setting authority to spread their costs or losses. Rather, privately owned utilities must obtain approval from the PUC before raising rates to recover their costs. But the PUC has recently made clear that it does not consider inverse condemnation relevant to its ratemaking determinations. The possibility that a privately owned utility may be able to recoup inverse condemnation losses in the event that it satisfies the PUC’s prudent manager standard (which is distinct from the strict liability standard under inverse condemnation that is applied by the courts) at some future time does not cure the constitutional problem the respondent court has created.

This situation is untenable: on the one hand, several California courts, including the respondent court, have dramatically expanded privately owned utilities’ exposure to claims of property loss and damage. On the other hand, privately owned utilities have no independent ability to socialize inverse condemnation losses through rate increases. And, most troubling, the respondent court has now concluded that inverse condemnation claims may proceed even if inverse condemnation losses could not be socialized at all. This framework is unconstitutional and poses a serious danger to privately owned utilities.

C. Inverse Condemnation Liability Threatens the Economic Health of Privately Owned Utilities

Even before the respondent court held that PG&E may be subject to inverse liability notwithstanding its inability to spread losses, participants in capital markets had become keenly aware that California’s unique inverse condemnation doctrine exposes privately owned utilities

---

13 See Moreland Inv. Co. v. Superior Court, 106 Cal. App. 3d 1017, 1022 (1980) (holding privately owned utility is not a governmental agency in part because it cannot directly pass on eminent domain costs to rate payers).

16 Decision, Application of San Diego Gas & Electric Company (U902E) for Authorization to Recover Costs Related to the 2007 Southern California Wildfires Recorded in the Wildfire Expense Memorandum Account (WEMA) (Cal. P.U.C. Dec. 6, 2017); see also Concurrence of President and Commissioner Michael Picker and Commissioner Martha Guzman Aceves, Decision, Application of San Diego Gas & Electric Company (U902E) for Authorization to Recover Costs Related to the 2007 Southern California Wildfires Recorded in the Wildfire Expense Memorandum Account (WEMA) (Cal. P.U.C. Dec. 26, 2017) (“We also respectfully urge the California Courts of Appeal to carefully consider the rationale for applying inverse condemnation in these types of cases.”); 8 App. 2793 at 21:29-22:15 (“[I]t is worth noting that the doctrine of inverse condemnation as it’s been developed by the courts and applied to public utilities may be worth re-examining in a sense that the courts applying the cases to public utilities have done so without really grappling with the salient difference between public and privately owned utilities, which is that there’s no guaranty that . . . privately owned utilities can recover the cost from their rate payers. So this is an issue that the legislature and the courts may wish to examine and may be called on to examine in the future.”) (Commissioner Rechtschaffen).

17 Under the respondent court’s approach, Plaintiffs need not establish that a private utility was at fault. But to recover its inverse condemnation losses through a PUC-approved rate increase, a private utility would bear the burden to affirmatively satisfy the PUC that it had acted prudently, which is largely a hindsight search for perfection that requires no causal nexus to the damage suffered.
to billions of dollars in unrecoverable losses regardless of whether they act negligently. For example, until October 6, 2017, the Friday before the North Bay wildfires began, PG&E’s stock was trading at approximately $70 per share. But from October 9, 2017 through December 29, 2017, PG&E’s stock price tumbled to approximately $45. This 35 percent drop represented billions of dollars in contraction in PG&E’s market capitalization. The stock price for SCE’s parent company, Edison International (“Edison”), followed suit once the Southern California wildfires broke out in December of last year. Whereas Edison’s stock had previously been trading at about $80 on December 4, 2017, the day the Thomas Fires broke out, news of the fires caused its stock price to fall by more than 14 percent two days later, representing billions in reduction in its market capitalization.

These dramatic reductions in PG&E’s and Edison’s stock prices—which impact their ability to raise capital in the equity markets needed to fund necessary electrical infrastructure—occurred before any fault has been determined. Likewise, citing the uncertainty and risk created by inverse condemnation liability as applied to investor-owned utilities, the ratings agencies have downgraded Edison, SCE, and SDG&E. Citing the “disconnect between the [PUC]’s prudence standard . . . and the courts’ strict liability standard,” Standard and Poor’s indicated that continued exposure to wildfire losses, recoverable from privately owned utilities via inverse condemnation damages, “could result in a deterioration of credit quality and lower credit ratings for all of the California regulated electric utilities.” Such credit downgrades have a serious impact on access to capital. The market’s response reflects concern that, even if privately owned utilities followed all applicable regulations and were not at fault for causing the fires, they could still be liable for unrecoverable losses under inverse condemnation principles and without the certainty of spreading those losses to all customers on whose behalf the electric system is operated.

---

18 See J.P. Morgan, North America Equity Research: Edison International, dated January 11, 2018 at 1 (noting that California’s inverse condemnation law significantly increases the risk of operating a utility in the state); Evercore ISI, CPUC Rejects Recovery of SDG&E Wildfire Costs; PCG’s Financial Risk Related to Inverse Condemnation Remains, dated December 1, 2017 at 2 (identifying California’s inverse condemnation law as a factor in PG&E’s stock price fluctuations); Deutsche Bank, Market Research: Earnings No Match for Wildfire Talk, dated November 13, 2017, at 1 (“The call included plenty of discussion of the question of California’s inverse condemnation doctrine for utilities which has been a subject of intense scrutiny of late among utility investors.”).

19 Moody’s Investors Service, Rating Action: Moody’s Changes Edison International and Southern California Edison’s Rating Outlooks to Negative (Apr. 11, 2018), https://m.moodys.com/Research.html?docid=PR_380780 (“SCE’s credit profile is weighed down by the potentially large contingent exposure created by the application of [a] strict liability standard in California in the case of wildfires where utility equipment was determined to be the source of the fire.”); see also Moody’s Investors Service, Rating Action: Moody’s Changes San Diego Gas & Electric’s Rating Outlook to Negative from Stable (Apr. 11, 2018), https://www.moodys.com/research/Moodys-Changes-San-Diego-Gas-Electrics-Rating-Outlook-to-Negative--PR_380749 (“The increasing inverse condemnation risk exposure has caused us to reassess our view of the credit supportiveness of the regulatory environment in California.”).

As the PUC has noted, “[r]easonable financial health is necessary so that each utility may serve reliable, safe and adequate electricity at just and reasonable rates.” After all, adequate capital is essential for utilities to operate, modernize, and expand their electrical transmission and distribution facilities. Such efforts benefit the public in real and immeasurable ways.

Relatedly, judicial expansion of inverse condemnation has impacted insurance costs for some utilities. As the PUC recently explained, privately owned utilities in California are beginning to have difficulty “obtain[ing] insurance to . . . cover the risk of fire both to their infrastructure and from their infrastructure.” This is because carriers are increasingly reluctant to underwrite wildfire risk given climate change, expansion of developments in the urban-wildland interface, and the increased destructiveness of California wildfires. These issues are compounded by judicial action exposing privately owned utilities to potentially enormous, unrecoverable losses under inverse condemnation principles. In this environment, wildfire liability insurance coverage has begun to contract, become more expensive, and may in the future become unavailable at times for certain utilities.

III. Frequent and Intense Wildfires Are the “New Normal” in California, Compounding the Negative Effects of Unbounded Inverse Condemnation Liability

Wildfires have always been a part of California’s landscape due to the state’s geography, ecology, and weather patterns. Recent experience, however, suggests that intense, devastating wildfires are here to stay. The past year saw five of the most destructive wildfires in California history. Climate change and human land use and management practices have combined to increase the environmental, physical, and economic threats posed by wildfires. Hotter summers and persistent droughts are projected to continue: by mid-century, average temperatures in the

---

21 Interim Opinion Modifying Decision 01-03-082 to Change Restriction on Use of Surcharge Revenues, D.02-11-026 at § 3.
22 The PUC has also acknowledged that a key factor in the financial health of public utilities is creditworthiness, since a lack of access to credit significantly impedes the utilities’ ability to procure and supply electricity at reasonable cost. Id. at § 3.1.1.
Los Angeles region could rise by 4.3°F, and 4.9°F in the San Diego region. An abundance of dying trees and dry vegetation—born after winter rains but dried to kindling by scorching summer heat—provides fuel for these fires. Efforts to contain these fires by managing forests and fires have been historically ineffective—or worse, counterproductive. Moreover, new residences in high-risk areas increase the probability that fire will cause injury and property damage.

Environmental and human factors indicate that wildfires are expected to increase not only in number, but also in duration and intensity. In 2017, wildfires burned more than 505,000 acres in California. Moreover, wildfires, which were traditionally concentrated in the fall months, are increasingly likely to take place year-round. As Governor Brown declared, catastrophic wildfires have become the “new normal” in California.

Although the consequences for this “new normal” should be shared by all Californians, inverse condemnation forces privately owned utilities to bear outsized financial exposure that results from California’s changing climate.

Urgent attention is required by this Court to address the very real legal, economic and environmental problems created by the respondent court’s decision. Wildfires worsen each year and privately owned utilities face an ever-increasing risk of liability, no matter what precautions

---

26 Inst. of the Env’t & Sustainability, Univ. of Cal., Los Angeles, Research Project: Climate Change in the Los Angeles Region, https://www.ioes.ucla.edu/project/climate-change-in-the-los-angeles-region.
27 County of San Diego, Climate Action Plan, Ch. 4-3 (2018), available at https://www.sandiegocounty.gov/content/sdc/psd/ceqa/Climate_Action_Plan_Public_Review.html.
31 According to CAL FIRE, California agencies responded to 4,785 fires in 2016 and 7,117 fires in 2017. CAL FIRE, Incident Information: Number of Fires and Acres, CA.gov, (Jan. 24, 2018), http://cdfdata.fire.ca.gov/incidents/incidents_stats?year=2017 (including all wildfires responded to by CAL FIRE in both the State and Local Responsibility Areas as well as all large wildfires in the State Responsibility Area protected by CAL FIRE’s contract counties).
32 Id.
they take. SCE and SDG&E respectfully urge this Court to decide now that inverse condemnation cannot extend to private entities if they have no right to spread losses.

Conclusion

Amici respectfully request that this Court grant PG&E’s Petition, and decide that inverse condemnation is inapplicable to privately owned utilities, who lack the ability to implement the basic purpose of inverse condemnation by socializing losses incurred by individual parties across the broader community.

Sincerely,

[Signature]

John C. Hueston
Moez M. Kaba
HUESTON HENNIGAN LLP
523 W. 6th Street, Suite 400
Los Angeles, CA 90014
(213) 788-4340
(888) 775-0898 (fax)

Attorneys for Amicus Curiae
Southern California Edison Company

/s/ C. Larry Davis

C. Larry Davis
Assistant General Counsel
San Diego Gas & Electric Company
8330 Century Park Court, Bldg. 3
San Diego, CA 92123
(858) 654-1621
(619) 696-4838 (fax)

Attorneys for Amicus Curiae
San Diego Gas & Electric Company
PROOF OF SERVICE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action. My business address is 620 Newport Center Drive, Suite 1300, Newport Beach, CA 92660.

On August 1, 2018, I served the foregoing document(s) described as:

APPLICATION TO FILE LETTER BRIEF OF AMICI CURIAE SOUTHERN CALIFORNIA EDISON COMPANY AND SAN DIEGO GAS & ELECTRIC COMPANY IN SUPPORT OF PACIFIC GAS & ELECTRIC COMPANY

on the interested parties in this action as stated on the attached mailing list.

✓ (BY ELECTRONIC FILING SERVICE) I filed and served such documents through the Court of Appeal’s electronic filing system (EFS) operated by ImageSoft TrueFiling (TrueFiling).

✓ (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope addressed as set forth on the attached mailing list. I placed each such envelope for collection and mailing following ordinary business practices. I am readily familiar with this Firm’s practice for collection and processing of correspondence for mailing. Under that practice, the correspondence would be deposited with the United States Postal Service on that same day, with postage thereon fully prepaid at Newport Beach, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Hon. Curtis E.A. Karnow
Superior Court of California
County of San Francisco
400 McAllister Street
San Francisco, CA 94102

VIA MAIL

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 1, 2018, at Newport Beach, California.

Sarah Jones
(Type or print name)

(Signature)